



UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000



NOV 12 2004

PERSONNEL AND
READINESS

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DIRECTOR, DEFENSE RESEARCH AND ENGINEERING
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, PROGRAM ANALYSIS AND EVALUATION
DIRECTOR, NET ASSESSMENT
DIRECTOR, FORCE TRANSFORMATION
DIRECTORS OF DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Collateral Misconduct in Sexual Assault Cases (JTF-SAPR-001)

This directive-type memorandum provides Department of Defense (DoD) guidance for addressing a victim's collateral misconduct that may be associated with a reported sexual assault. Each Military Service shall establish Service-specific guidance to ensure collateral misconduct is addressed in a manner that is consistent and appropriate to the circumstances, and at a time that encourages continued victim cooperation. Ultimately, victim cooperation should significantly enhance the command's ability to conduct timely and effective investigations, as well as the appropriate disposition of sexual assault cases.

One of the most significant barriers to the reporting of a sexual assault is the victim's fear of punishment for some of the victim's own actions leading up to or associated with the sexual assault incident. Many reported sexual assaults involve circumstances where the victim may have engaged in some form of misconduct (i.e., underage drinking or other related alcohol offenses, adultery, fraternization or other violations of certain regulations or orders). Such behavior may be considered collateral misconduct, and may be viewed as a contributing factor to the sexual assault.

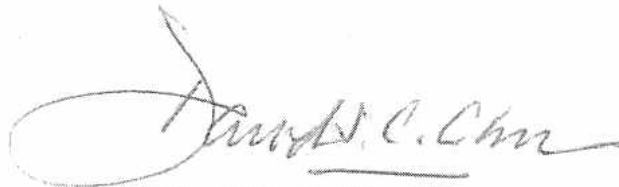
Unit commanders have authority to determine, in a timely manner, how to best dispose of alleged misconduct, to include making the decision to defer disciplinary actions regarding a victim's collateral misconduct until after the final disposition of the sexual assault case. Unit commanders should exercise that authority in appropriate cases. Additionally, for those sexual



assault cases for which the victim's collateral misconduct is deferred, Service reporting and processing requirements should take such deferrals into consideration and allow for the time deferred to be subtracted.

When considering what corrective actions may be appropriate for the victim's collateral misconduct, commanders and supervisors should keep in mind the critical importance of responding appropriately in order to encourage sexual assault reporting and continued cooperation, while avoiding those actions that may further traumatize the victim.

This guidance establishes DoD policy on sexual assault matters. This memorandum is effective immediately. This and other sexual assault policies will be consolidated into a DoD issuance within 180 days.

A handwritten signature in dark ink, appearing to read "David S. C. Chu", with a large, stylized loop at the beginning.

David S. C. Chu



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NOV 22 2004

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
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SUBJECT: Increased Victim Support and A Better Accounting of Sexual Assault Cases (JTF-SA 002)

This directive-type memorandum establishes DoD guidelines for providing enhanced response to Service member victims of sexual assault and to bring about a better accounting of those responses. Each Military Service shall establish appropriate guidance to ensure that all reported sexual assault incidents are appropriately investigated and disposed of in accordance with the Uniform Code of Military Justice, Manual for Courts-Martial, and established policies. Service member victims, and to the extent practicable civilian victims, are to be kept well-informed of any investigative actions taken in response to their reported sexual assault.

Effective immediately, unit commanders of reported victims of sexual assault will ensure, at a minimum, a monthly update is provided to the victim regarding the current status of any on-going investigative, medical, legal or command proceedings regarding their sexual assault. This requirement is in addition to those established by the Victim-Witness Assistance Program. Monthly updates are required until the final disposition of the reported assault. "Final disposition" means the conclusion of any judicial, non-judicial, and administrative actions (including separation actions) taken in response to the offense, whichever is later in time.

In an effort to improve the timeliness of investigations and promote expedient resolution of sexual assault cases, unless otherwise expressly excused by operation of law, regulation, or policy, any military authority who receives a report of an incident of sexual assault shall refer the matter as soon as practicable to investigative authorities assigned to

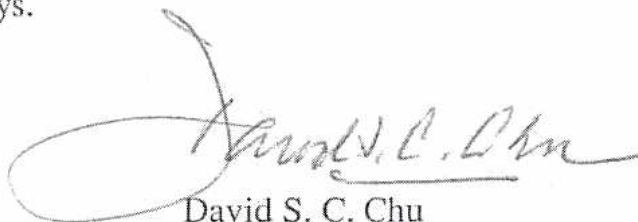


the appropriate Military Criminal Investigative Organization (i.e., Defense Criminal Investigative Service, Naval Criminal Investigative Service, United States Army Criminal Investigation Command, or Air Force Office of Special Investigations), who, in turn, will ensure the victim's unit commander is informed.

Finally, to ensure these cases receive the consistent and appropriate level of command attention and the full responses required by the sensitivities and complexities involved, all Services shall designate a level of command commensurate with the maturity and experience to address the responsibilities involved. The Services will provide a copy of this proposed policy or guidance, with an accompanying rationale NLT January 14, 2005. My POC for this action is Brigadier General K.C. McClain, USAF, Commander, Joint Task Force (Sexual Assault Prevention and Response).

The actions we take to enhance victim support and improve the manner in which we account for the actions taken will encourage more victims to come forward and report these tragic incidents. With time, an increased number of reported cases will build victim confidence in our investigative and military justice systems, and allow us to take the necessary actions to identify and appropriately discipline perpetrators.

This guidance establishes DoD policy on sexual assault matters. This memorandum is effective immediately. This and other sexual assault policies will be consolidated into a DoD issuance within 180 days.



David S. C. Chu



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NOV 22 2004

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (M&RA)
ASSISTANT SECRETARY OF THE NAVY (M&RA)
ASSISTANT SECRETARY OF THE AIR FORCE (M&RA)

SUBJECT: Data Call for CY04 Sexual Assaults (JTF-SAPR-003)

In preparation for the Secretary of Defense's report to the House and Senate Armed Services Committees, I am requesting your assistance in providing, by January 28, 2005, the following data on sexual assaults within your Service that were reported to military officials during CY04:

- The number of sexual assaults against Service members by Service members.
- The number of sexual assaults against Service members by non-Service members.
- The number of sexual assaults by Service members against non - Service members.
- The number of actions taken for each reported sexual assault in the above categories:
 - Investigations opened during the CY;
 - Of those investigations opened during the CY, the number completed during the CY;
 - Of those investigations opened during the CY, those still pending civilian/military disposition at the end the CY.
 - Final disposition to be reported:
 - civilian criminal court action
 - court-martial
 - Article 15, UCMJ, action (non-judicial punishment)
 - other adverse military administrative actions
 - administrative discharge in lieu of court-martial
 - administrative discharge in lieu of disciplinary action as noted above
 - other specified administrative actions to include letter of caution, letter of reprimand/memorandum (not issued at article 15 hearing or court-martial)
 - no actions taken and reason why not (report the reason no action taken as short and succinct as possible such as: insufficient evidence, victim recanted, death of offender, etc...)

(Note: Indicate multiple actions taken on one offense.)

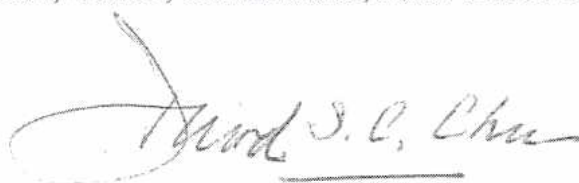


- The policies, procedures and processes in place or implemented during CY04 in response to incidents of sexual assault involving Service members.
- Any plans for Service actions that will be taken during CY05 related to the prevention of and response to sexual assault involving Service members specifically in the areas of: advocacy, healthcare provider/medical response, mental health, counseling, investigative services, legal services, and chaplain response.

For the purposes of this request, sexual assault cases include alleged offenses of rape (Article 120, UCMJ), forcible sodomy (Article, 125, UCMJ), indecent assault (Article 134, UCMJ; Para. 63, Part IV, Manual for Courts-Martial), and an attempt to commit any of these offenses (Article 80, UCMJ). Exclude all cases involving a child (i.e., a person who at the time of the assault had not yet attained the age of 16).

This data call is the basis for quarterly and annual reports until the DIBRS system is fully implemented to include the data fields necessary for comprehensive reporting. In the quarterly reports the policies and plans actions are not required. Quarterly reports are due as follows: April 15, 2005, for investigations opened during the period of January 1 – March 31; July 15, 2005, for investigations opened during the period of April 1 – June 30; and October 14, 2005, for investigations opened during the period of July 1 – September 30. The final quarterly report shall be included as part of the CY annual report. Each quarterly report and subsequent annual reports shall update the status of those previously-reported investigations that were reported as opened, but not yet completed or with action pending at the end of a prior reporting period. Once final action taken is reported, that specific investigation no longer needs to be reported. This reporting system will enable us to track sexual assault cases from date of initiation to completion. Additional data will be requested from the Services at a later date to report the tracking of victims' case management.

Your cooperation in this matter is sincerely appreciated. My POC for this action is Brigadier General K.C. McClain, USAF, Commander, Joint Task Force Sexual Assault Prevention and Response.



David S. C. Chu

Attachment:
As stated

cc:
Deputy Commandant USMC (M&RA)
Director, Joint Staff

HR 4200
Section 577

- (f) ANNUAL REPORT ON SEXUAL ASSAULTS- (1) Not later than January 15 of each year, the Secretary of each military department shall submit to the Secretary of Defense a report on the sexual assaults involving members of the Armed Forces under the jurisdiction of that Secretary during the preceding year. In the case of the Secretary of the Navy, separate reports shall be prepared for the Navy and for the Marine Corps.
- (2) Each report on an Armed Force under paragraph (1) shall contain the following:
- (A) The number of sexual assaults against members of the Armed Force, and the number of sexual assaults by members of the Armed Force, that were reported to military officials during the year covered by such report, and the number of the cases so reported that were substantiated.
 - (B) A synopsis of, and the disciplinary action taken in, each substantiated case.
 - (C) The policies, procedures, and processes implemented by the Secretary concerned during the year covered by such report in response to incidents of sexual assault involving members of the Armed Force concerned.
 - (D) A plan for the actions that are to be taken in the year following the year covered by such report on the prevention of and response to sexual assault involving members of the Armed Forces concerned.
- (3) Each report under paragraph (1) for any year after 2005 shall include an assessment by the Secretary of the military department submitting the report of the implementation during the preceding fiscal year of the policies and procedures of such department on the prevention of and response to sexual assaults involving members of the Armed Forces in order to determine the effectiveness of such policies and procedures during such fiscal year in providing an appropriate response to such sexual assaults.
- (4) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives each report submitted to the Secretary under this subsection, together with the comments of the Secretary on the report. The Secretary shall submit each such report not later than March 15 of the year following the year covered by the report.
- (5) For the report under this subsection covering 2004, the applicable date under paragraph (1) is April 1, 2005, and the applicable date under paragraph (4) is May 1, 2005.



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SUBJECT: Commander Checklist for Responding to Allegations of Sexual
Assault (JTF-SAPR-005)

This directive-type memorandum establishes policy that complies with Section 577 and of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108-375, October 28, 2004, and provides a DoD checklist for assisting commanders in safeguarding the rights of the victim and the accused, as well as addressing appropriate unit standards and interests, in sexual assault cases. Its primary objective is to ensure the appropriate balance between a victim's right to feel secure and the accused's rights to due process under the law.

The Department of Defense is fully committed to ensuring the safety and well-being of all members of its Armed Forces. Recognizing that a commander may only respond to one or two sexual assault allegations during his or her tenure, the attached sexual assault response checklist is provided to assist in successfully navigating the myriad of competing interests which may result once a sexual assault is reported. Each Military Service will use this checklist as a guide to respond to reported sexual assaults. Additional Service-specific guidelines may be incorporated as appropriate or needed.

Commanders notified of a reported sexual assault must immediately take steps to ensure the victim's physical safety, emotional security and medical treatment needs are met, and that the appropriate criminal investigative service is notified. Additionally, the victim's unit commander must take the necessary actions to assess and determine the need for

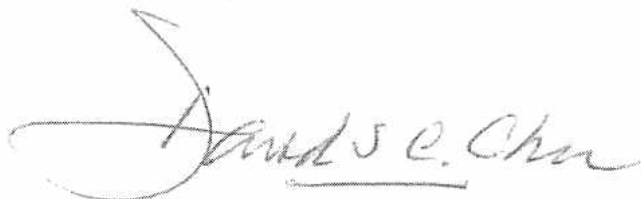


temporary reassignment of the of the victim or the accused being investigated, working with the accused's commander if different than the victim's commander, until there is a final legal disposition of the sexual assault allegation, or any physical safety or emotional security issues are resolved. This might include reassignment to a different unit, duty location, or living quarters on the same installation. To the maximum extent possible, commanders should consider the victim's desires prior to any reassignment decision.

In addition, commanders should also consider "no contact" orders or execute Military Protection Order, DD Form 2873. The victim's commander should consult with each of the members involved in the case response team (i.e., legal, medical, victim advocate, chaplain, etc.) and the commander of the accused, if appropriate, before making a final determination. While the ultimate goal of this analysis is to prevent further harm or victimization of the victim, mission requirements, especially in remote or overseas locations, may dictate other carefully tailor solutions. Commanders have the authority to expand upon this checklist, if necessary, to protect victims from further harm or trauma, or to safeguard the unit. Commanders may also exercise similar considerations for the subject of the investigation.

All Military Services shall submit a copy of their implementing guidance for a Commander's checklist not later than 28 February, 2005. My POC for this action is Brigadier General KC McClain, Commander, Joint Task Force for Sexual Assault Prevention and Response.

This guidance establishes DoD policy on sexual assault matters. This memorandum is effective immediately. This and other sexual assault policies will be consolidated into a DoD issuance within 180 days.

A handwritten signature in dark ink, appearing to read "David S. C. Chu", with a large, stylized flourish above the name.

David S. C. Chu

Attachment:
As stated



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SUBJECT: Review of Administrative Separation Actions Involving Victims of Sexual
Assault (JTF-SAPR-004)

This directive-type memorandum implements Section 577(b)(8) of the National Defense Authorization act for Fiscal Year 2005, as part of the Secretary of Defense's comprehensive policy for the Department of Defense on the prevention and response to sexual assaults involving members of the Armed Forces. The comprehensive DoD policy is to address several matters, including a requirement for the review by appropriate authority of administrative separation actions involving victims of reported sexual assault.

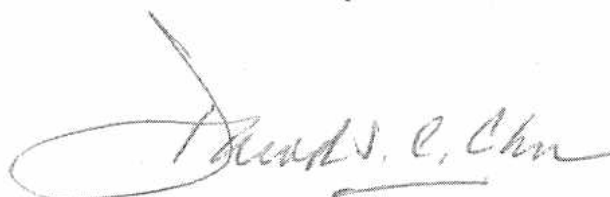
Circumstances associated with a reported sexual assault incident may ultimately result in a determination that the administrative separation of the victim is in the best interests of either the Armed Forces or the victim, or both. Regardless of the reason for initiating the separation action, each victim is entitled to a full and fair consideration of the victim's military service and particular situation. It is vital that all such separation actions and ultimate determinations be consistent and appropriate, and be viewed as such. Accordingly, all Military Services shall designate a level of command, commensurate with the maturity and experience needed, to review all administrative separation actions involving victims of sexual assault and to exercise the responsibilities involved.

All Military Services shall submit the proposed level of command identified, along with the rationale for the selection not later than 10 January 2005. My POC for this



action is Brigadier General K.C. McClain, Commander, Joint Task Force for Sexual Assault Prevention and Response.

This guidance establishes DoD policy on sexual assault matters. This memorandum is effective immediately. This and other sexual assault policies will be consolidated into a DoD issuance within 180 days.

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David S. C. Chu

COMMANDER RESPONSE PROTOCOLS for ALLEGATIONS OF SEXUAL ASSAULT

VICTIM

- Ensure the physical safety and emotional security of the victim--determine if the alleged assailant is still nearby and if the victim desires/needs protection.
- Determine if the victim desires/needs any emergency medical care.
- Notify the military criminal investigative organization, as soon as the victim's immediate safety is assured, and victim's medical treatment procedures are in motion (*See, Under Secretary of Defense (Personnel and Readiness) Memorandum "Increased Victim Support and A Better Accounting of Sexual Assault Cases," November 22, 2004.*);
 - Strictly limit the fact of or details regarding the incident to only those personnel who have a legitimate need to know.
 - Take action to safeguard the victim from any formal or informal investigative interviews or inquiries, except those conducted by the military criminal investigative organization.
- Collect only the necessary information (e.g. victim's identity, location and time of the incident, name and/or description of offender(s)). DO NOT ASK DETAILED QUESTIONS AND/OR PRESSURE THE VICTIM FOR RESPONSES OR INFORMATION ABOUT THE INCIDENT.
- Advise the victim of the need to preserve evidence (by not bathing, showering, washing garments, etc.) while waiting for the arrival of representatives of the military criminal investigative organization.
- Assist with or provide immediate transportation for the victim to the hospital or other appropriate medical facility.
- Ensure the victim understands the medical, investigative, and legal process and is advised of his/her victim support rights.
- Ask if the victim needs a support person (can be a personal friend), advocate, or professional to immediately join the victim.
- Ensure the victim understands the role and availability of a Victim Advocate.
- Ask if the victim would like a Victim Advocate to be assigned; if so, contact the Sexual Assault Response Coordinator. The Sexual Assault Response Coordinator will assign a Victim Advocate to meet with and provide support to the victim.
- Ask if the victim would like a Chaplain to be notified and notify accordingly.

- Determine if the victim desires/needs a "no contact" order or a Military Protection Order, DD Form 2873, to be issued, particularly if the victim and the accused are assigned to the same command, unit, duty location, or living quarters.
- Determine the need for temporary reassignment to another unit, duty location, or living quarters on the installation of the victim or the accused being investigated, working with the accused's commander if different than the victim's commander, until there is a final legal disposition of the sexual assault allegation, and/or the victim is no longer in danger.
 - To the extent practicable, consider the desires of the victim when making any reassignment determinations.
- Determine how to best dispose of the victim's collateral misconduct. Absent overriding considerations, commanders should exercise their authority in appropriate cases, and defer disciplinary actions for the victim's minor misconduct until after the final disposition of the sexual assault case. (*See, Under Secretary of Defense (Personnel and Readiness) Memorandum "Collateral Misconduct in Sexual Assault Cases," November 12, 2004.*)
- Avoid automatic suspension or revocation of a security and/or personnel reliability program (PRP) clearance, when possible, understanding that the victim may be satisfactorily treated for his/her related trauma without compromising his/her PRP status. Consider the negative impact that suspension of a victim's security clearance may have on building a climate of trust and confidence in the service reporting system.
- Throughout the investigation, consult with the victim and, to the extent practicable, accommodate the victim's desires regarding safety, health, and security, as long as neither a critical mission nor a full and complete investigation are compromised.
- Listen/engage in quiet support of the victim, as needed. Be available in the weeks and months following the sexual assault, and assure the victim that she/he can rely on the commander's support.
- Emphasize to the victim the availability of additional avenues of support; refer to available counseling groups and other victim services.
- Ensure the victim receives monthly reports regarding the status of the sexual assault investigation until its final disposition. (*See, Under Secretary of Defense (Personnel and Readiness) Memorandum "Increased Victim Support and A Better Accounting of Sexual Assault Cases," November 22, 2004.*)
- Consult with the servicing legal office, criminal investigative organization, and notify the assigned Victim Advocate prior to taking any administrative or disciplinary action affecting the victim.

ACCUSED

- Contacts with a service member suspected of an offense under the Uniform Code of Military Justice (UCMJ) involve rules and procedures that may be unique within the military. Therefore, before questioning the suspected service member or discussing the case with the service member, commanders and other command representatives should first contact the servicing legal office for guidance. Follow the guidance provided to:
 - Avoid discussing or questioning the sexual assault allegation with the accused service member, to the extent practicable, since doing so may jeopardize the criminal investigation. However, if questioning does occur, prior to questioning the accused service member, advise the service member suspected of committing a UCMJ offense of his/her rights under Article 31 of the UCMJ, and right to defense counsel representation, before questioning him or her or before discussing the sexual assault allegations.
 - Notify the appropriate military criminal investigative organization as soon as possible after receiving a report of a sexual assault incident. (See, Under Secretary of Defense (Personnel and Readiness) Memorandum "Increased Victim Support and A Better Accounting of Sexual Assault Cases," November 22, 2004.)
 - Safeguard the accused's rights and preserve the integrity of a full and complete investigation, to include limitations on any formal or informal investigative interviews or inquiries by personnel other than those assigned to the military criminal investigative organization conducting the investigation.
 - Strictly limit information, the fact of and the details about the investigation to those who have a legitimate need to know.
 - Ensure procedures are in place to inform the accused service member about the investigative and legal processes that may be involved.
 - Ensure procedures are in place to inform the accused service member about available counseling support. As may be appropriate under the circumstances, refer the accused service member to available counseling groups and other services.
 - Emphasize that the accused is presumed innocent until proven guilty.
- With the benefit of legal and investigative advice, determine the need for a "no contact" order, or the issuance of a Military Protection Order, DD Form

2873, if the victim and the accused are assigned to the same unit, command, or location.

- Monitor the well-being of the accused service member, particularly any indications of suicide potential, and ensure appropriate intervention occurs if indicated.

UNIT

PREVENTION

- Establish a command climate of prevention that is predicated on mutual respect and trust, that recognizes and embraces diversity, and that values the contributions of all its members.
- Reassure members of your personal commitment to maintaining a healthy environment that is safe and contributes to their well-being and mission accomplishment.
- Reiterate your “zero tolerance” policy on sexual assault and the potential consequences for those who violate the law.
- Keep a “finger on the pulse” of the organization’s climate and respond with appropriate action toward any negative trends that may emerge.

IN THE EVENT OF A SEXUAL ASSAULT

- Encourage members to be appropriately supportive of one another within the organization, to include both the victim and alleged offender in the incident.
- Advise those who may have knowledge of the events leading up to or surrounding the incident to fully cooperate with any investigation involved.
- Ensure proper authorities are available to explain to potential witnesses the potential consequences of discussing any details related to the on-going investigation.
- Discourage members from participating in “barracks gossip” or grapevine speculation about the case or investigation, reminding all to wait in reaching conclusions until all the facts are known and final disposition of the allegation has occurred.
- Consider some form of unit refresher training; or have an outside expert address the unit regarding preventive measures, as well as some of the emotional or psychological feelings that may manifest themselves, affect the unit, and require their response during the course of the investigation.



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SUBJECT: Department of Defense (DoD) Definition of Sexual Assault (JTF-SAPR-006)

This directive-type memorandum establishes the DoD definition for *sexual assault* and *other sex-related offenses* as required by Section 577 (3) of the Ronald W. Reagan National Defense Authorization act for Fiscal Year 2005, P. L. 108-375, October 28, 2004. The use of the below definitions is for training and educational purposes only. The following apply:

Sexual assault is a crime. Sexual assault is defined as intentional sexual contact, characterized by use of force, physical threat or abuse of authority or when the victim does not or cannot consent. Sexual assault includes rape, nonconsensual sodomy (oral or anal sex), indecent assault (unwanted, inappropriate sexual contact or fondling), or attempts to commit these acts. Sexual assault can occur without regard to gender or spousal relationship or age of victim.

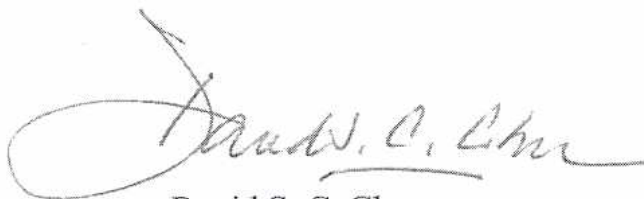
"Consent" shall not be deemed or construed to mean the failure by the victim to offer physical resistance. Consent is not given when a person uses force, threat of force, coercion or when the victim is asleep, incapacitated, or unconscious.

Other sex-related offenses are defined as all other sexual acts or acts in violation of the Uniform Code of Military Justice that do not meet the above definition of sexual assault, or the definition of sexual harassment as promulgated in DoD Directive 1350.2, *Department of Defense Military Equal Opportunity*, para E2.1.15. Examples of other sex-related offenses could include indecent acts with another and adultery.



All Military Services will use the above definitions in all training and education programs. Submit a copy of the implementing guidance of these definitions not later than 1 February 2005. POC for this action is Brigadier General K.C. McClain, Commander, Joint Task Force for Sexual Assault Prevention and Response.

This guidance establishes DoD policy on sexual assault matters. This memorandum is effective immediately. This and other sexual assault policies will be consolidated into a DoD issuance within 180 days.

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